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Date: 06/04/2020

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Dear Ms Heywood

RE: General Conformity Issues raised by the Mayor of London

Introduction

Further to your email of 6 January 2021 concerning the general conformity of the Havering Local Plan (“the Plan”) with the Publication London Plan (“the London Plan”), the Council responded setting out its initial view on the 15th January. At your request, the Council also sought the view of the GLA.

The GLA’s response was received on the 18th March 2021. Your letter dated 25th March 2021 seeks the Council’s views on the matters raised in the GLA’s letter. These are set out below.

The legal duty to be in “general conformity” relates to the London Plan which is adopted at the time of the adoption of the Havering Local Plan. The London Plan 2021 was formally published on 2nd March 2021.

As you will be aware, the Havering Local Plan was prepared in accordance with the London Plan 2016 and has been tested against this London Plan throughout the Examination. In these circumstances it is inevitable that there will be some areas of the Local Plan that do not fully align with new London Plan.

Issues which are not conformity issues

In their response, the GLA raise a number of issues that they would like addressed to align the Local Plan more fully with the London Plan 2021. These issues relate to Housing, Industrial Land, Affordable Workspace and Air Quality. The GLA has confirmed that these are not issues of general conformity.

The Local Plan is at a late stage in its examination process and consultation has already taken place on the Main Modifications. This includes a commitment to undertake an immediate update of the Plan. The Council is keen to ensure that there is no further delay

to the adoption of the Local Plan. In light of this the Council proposes to consider the issues that are not conformity issues as part of the immediate update of the Plan.

The GLA have requested all references to the London Plan and SHMA be updated. The Council do not believe this to be appropriate in all circumstances. The Council suggest that that the following minor modifications are made:

- Paragraph 5.1.5 ~~The next London Plan will re-affirm the role of Romford by designates ing Romford it as an Opportunity Area in recognition of its potential to address an important part of Havering's growth potential.~~
- Paragraph 7.4.5 ~~The London Plan includes an annual indicative benchmark for specialist older persons housing of 185 units for Havering. 2016 states that boroughs should identify and address the local expression of older persons strategic housing needs, informed by indicative requirements set out in Annex A5 of the London Plan 2016. Havering's indicative requirement is identified as being 185 additional units per year.~~

The Council consider that for clarification purposes it is appropriate to add the following text to the Local Plan as a minor modification.

- New paragraph 1.1.6 - The Havering Local Plan was prepared in the context of the London Plan 2016. At a late stage in the Examination process the London Plan 2021 was published. The Local Plan was found to be in general conformity with the new London Plan. However the Council recognise the importance of an immediate update of the Local Plan and the on-going discussions with the GLA to consider the small number of matters where there is a disparity between the Local Plan and the London Plan. All references to the London Plan in this document refer to the London Plan 2021 unless otherwise stated.

Non-conformity issues

Turning to the issues of alleged non-conformity, the Council would like to re-iterate the comments submitted to the Inspector previously, in order that you have a convenient consolidated response.

It is useful briefly to consider the legal principles underlying the requirement of "general conformity". There is no statutory definition of the term. Accordingly, assistance must be sought from caselaw. As set out most conveniently in *R (DLA Delivery Ltd) v Lewes DC* [2017] EWCA Civ 58, per Lindblom LJ at [23]:

"The degree of conformity required is "general" conformity with "strategic" policies. Whether there is or is not sufficient conformity to satisfy that requirement will be a matter of fact and planning judgment."

As to the degree of conformity required, further assistance can be derived from *Persimmon Homes (Thames Valley) Ltd v Stevenage Borough Council* [2005] EWCA Civ 1365 per Laws LJ:

"24 The term is nowhere defined in the legislation. The court must therefore apply its ordinary meaning as a matter of language, taking into account, however, the practicalities

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of planning control which are inherent in the statutory scheme. The question of construction is, essentially, as to the flexibility of the requirement of general conformity: is it relatively tight, or relatively loose?...

...

26. ...*The adjective “general” is there ...to introduce a degree of flexibility.*

...

29. *the right interpretation of “general conformity” is ... a balanced one, it will ... allow what may be a considerable degree of movement within the local plan to meet the various and changing contingencies that can arise. In that case the question whether the local plan is in general conformity with the structure plan is likely to admit of more than one reasonable answer, all of them consistent with the proper construction of the statute and of the relevant documents. In those circumstances the answer at length arrived at will be a matter of planning judgment and not of legal reasoning.”*

Accordingly:

(1) This matter is one for the Inspector’s planning judgement, a judgement which could only be challenged on Wednesbury principles.

(2) The requirement is only that there be “general conformity” with relevant London Plan policies; there does not need to be exact compliance with every requirement of the London Plan but instead a compliance with the overall strategic aims and objectives of the London Plan, combined with an absence of any policy which would obstruct those objectives.

(3) In coming to the planning judgement as to whether the Plan is in general conformity with the London Plan, all relevant circumstances must be considered. In the current context, the fact that there is a stated firm intention on the part of LBH (now recorded in Local Plan Main Modifications) to begin an update of the Plan immediately upon its adoption is a relevant planning consideration which must be taken into account in the determination of the issue of general conformity. This may well be relevant when general conformity with some of the detailed requirements of the London Plan is considered, and will allow the Inspector lawfully to come to the conclusion that there is general conformity on the basis that those particular requirements will be attended to in detail during the review process which is a stated intention of the Plan.

With respect to (3) above, the Council appreciates that you said in your letter of 25th March you would not consider that those matters **alone** would allow you to agree the plan is in general conformity. That is accepted, but the Council maintains its view that the existence of the immediate review is a material factor which is a relevant consideration for you to take account of when consider the broader issues raised in the GLA’s letter and this response.

Having considered the response from the GLA, the Council maintains its position set out in its letter of 15th March 2021 that the Local Plan is in general conformity with the London Plan 2021. The Council’s response to each of the three conformity issues raised by the GLA is set out below.

Affordable Housing

The Council strongly disagree that the Local Plan policy on affordable housing is out of conformity with the new London Plan.

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The Mayor's 50% strategic affordable housing target was raised by the GLA in their response to the Havering Local Plan Regulation 19 consultation in 2017 and this was discussed during the examination.

Policy 4 of the Local Plan seeks to maximise the affordable housing provision from new developments. The outer north east London SHMA demonstrates that in Havering, there is a need for 35% of homes to be affordable. The Council do not believe it is necessary to repeat the Mayor's 50% strategic affordable housing target which applies to the whole of London. This represents a clear example of the flexibility which was approved of in the *Persimmon v Sevenoaks* case noted above. The Local Plan also reflects the 35% threshold approach which was previously introduced through the Mayors affordable housing SPG and has now been incorporated into the London Plan. The GLA supported this approach in their regulation 19 consultation response.

The Local Plan does not specifically refer to the 50% threshold which applies on Industrial Land and Publically owned land. The GLA identify this as the most significant of the three elements that comprise the affordable housing conformity issue.

The Local Plan is not required to repeat regional policy. The Council contend that the absence of the reference to the 50% threshold approach does not comprise a conformity issue because the Local Plan does not seek to contradict the London Plan approach and the 50% threshold in these specific locations will be applied in development control decisions. If considered necessary by the Inspector, the Council suggest adding a minor modification to Policy 4 or the support text to repeat the London Plan approach on public land and industrial land.

The final affordable housing conformity issue raised by the GLA relates to affordable housing being based on gross rather than net dwellings. Local Plan table 10 states that the Council will monitor net affordable housing completions. This is for monitoring purposes only as it is important to understand the quantum of affordable housing that is added to Havering's housing stock each year, taking into account any demolitions. It was not the Council's intention to imply that the affordable housing targets apply to net dwellings and the Council contend that the issue being raised by the GLA is factually incorrect.

The Council do not consider that this is a conformity issue relating to the new London Plan and it should have been raised by the GLA previously through consultation at Regulation 19 stage or during the more recent main modifications consultation.

The Council consider that this is an issue of clarification and if considered necessary by the Inspector could be addressed by a minor modification.

Waste

As you state in your letter of 25th March 2021, there may be matters which can easily be separated from the Plan, such as waste. The Council has always been clear that planning policies for waste are dealt with through a separate Joint East London Waste Plan and this will continue through the update of the East London Waste Plan. This joint approach to waste planning is encouraged in paragraph 9.8.7 of the London Plan.

There is a commitment to updating the East London Joint Waste Plan and the commissioning of joint baseline evidence is already underway. Should there be delays to the preparation of the Joint Waste Plan the Council are fully aware that they will need to

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be able to demonstrate through the immediate update of the Local Plan how the London Plan waste apportionments will be met.

Transport

The Council accept that the revision of parking standards in the London Plan creates some limited conflict with the Plan as identified in our letter dated 15th January 2021. However, such matters are confined to limited differences of position in respect of areas with lower PTALs where the Council has already set out its position in detail in the Examination. LBH strongly disagree that this is an issue of general conformity. The extent of any conflict is so insignificant that it cannot undermine the overall general conformity of the Plan with the London Plan.

The Mayor raises three specific issues in relation to the parking standards and these are considered in turn below

Minimum parking standards in opportunity areas

The Mayor contends that the parking standards for opportunity areas would be undermined by the application of minimum standards as set out in the London Plan.

The Local Plan sets minimum standards for PTALs 0-1 and limited areas of PTAL 2 (800 metres from a train or tube station) regardless of their location within or outside an opportunity area. Havering has two opportunity areas, Romford and Rainham and Beam Park.

Within Romford Opportunity Area/Strategic Development Area (SDA), those areas that are captured by the minimum standards (PTAL 0-1 and limited areas of PTAL 2) are confined to a small area in the north of the SDA and the western edge of the SDA. These are on the outskirts of the opportunity area which are characterised by suburban housing and by nature of their PTALs have limited access to public transport. These locations are outside the core of the opportunity areas where new development would be concentrated.

In Rainham and Beam Park, the position is similar, the areas impacted by the minimum standards is the north eastern part of the SDA which is characterised by suburban housing and is outside the core area of the SDA where the majority of new residential development is planned. This part of the borough is not well connected with PTALs at 1a/1b and residents have little choice but to travel by private vehicle, particularly for making internal journeys to other parts of the borough.

The new station at Beam Park and complimentary bus routes serving the station will improve PTALS in the vicinity particularly where new residential development is proposed along A1306 New Road and in some places will increase the PTAL rating from 2 to 3, which would fall outside the criteria for minimum parking standards.

The application of the minimum standards would therefore have no impact on realising the potential of the OA in terms of housing delivery. However, the application of the minimum standard in these limited areas will ensure a suitable level of parking for residents where PTALs are low and where there are no planned improvements to public transport. Given the limited area that will be impacted by the minimum standards, LBH do not consider this a general conformity issue.

Minimum standards for PTAL 2

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The London Plan 2021 requires any boroughs seeking minimum residential standards to do so only in areas within PTAL 0-1. This represents a tightening of the approach set out in the previous London Plan and is an issue which was considered extensively during the Local Plan examination.

The Local Plan policy approach as set out in the Main Modifications sets minimum standards for PTAL 0-1 and limited areas of PTAL 2, which are further than 800m from an existing or proposed train or tube station.

The council strongly disagree that the setting of a minimum standard in these very limited areas of PTAL 2 is a sufficient divergence from London Plan policy to represent a conformity issue. The Councils commitment to an immediate review provides the opportunity this issue to be more fully considered by all parties.

Minimum standards for 4+ bedrooms.

The London Plan sets a maximum parking standard of 1.5 units for dwellings of 4+ bedrooms in outer London Boroughs in areas with a PTAL of 0-1.

The Local Plan sets a minimum standard for 4+ beds of up to 2 spaces

In relation to this specific parking standard the London Plan states (in a footnote to table 10.3) that outer London boroughs should consider higher standards that allow for higher levels of provision where there is clear evidence that this would support additional family housing.

The GLA contend that in the absence of appropriate evidence this constitutes an issue of non-conformity.

Given the flexibility provided by the London Plan and the Council's commitment to an immediate review, the Council believe that there is general conformity with this policy and the immediate update provides an early opportunity for further evidence to be sought and considered by all parties. The Council consider that a minor modification could be added to this effect as set out below:

- Add to paragraph 10.2.3: As part of the immediate update of the Local Plan, the Council will look to further develop its evidence on the appropriateness of the minimum standards for 4+ beds.

Conclusion

In conclusion, and for the reasons set out about above, the Council strongly disagrees with the GLA's view on the conformity issues raised in their letter of the 18th March and contends that no further Main Modifications are required. The publication of the London Plan 2021 does not present an obstacle to the adoption of the Local Plan as now drafted.

The Council does accept that there are areas of the Local Plan that could align more fully with the London Plan. This is inevitable given the Local Plan has been prepared and examined in the context of the London Plan 2016. The Council has already committed to an immediate update of the Local Plan which will provide the opportunity to ensure that the Plan is fully aligned. LBH do not wish to delay the adoption of the Local Plan any further.

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Your letter asked (Q6) whether it is possible for the Council to work with the GLA to resolve the concerns raised and produce a Statement of Common Ground. The Council would be willing to continue its dialogue with the GLA, but given the differences in opinion the Council is of the view that this is unlikely to resolve the outstanding issues and would further delay your conclusion on these matters.

Your letter also asked for the Council's response on a number of other matters (Questions 2-4). In light of the Council's response to you on Question 1, I trust you will appreciate why a specific response is not being provided.

In response to Q5 in your letter, should you conclude that you disagree with the Council's position on general conformity and you direct the Council to make Main Modifications to the Local Plan, these main modifications will have to be subject to consultation.

Yours sincerely

Helen Oakerbee
Assistant Director of Planning